VZCZCXRO8935
RR RUEHCHI RUEHDT RUEHHM
DE RUEHBK #3219/01 1461020
ZNR UUUUU ZZH
R 261020Z MAY 06
FM AMEMBASSY BANGKOK
TO RUEHC/SECSTATE WASHDC 9107
INFO RUEHZS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS
RUEHCHI/AMCONSUL CHIANG MAI 1862
RUEAWJA/DEPT OF JUSTICE WASHDC
RUEATRS/DEPT OF TREASURY WASHDC
RHEBAAA/DEPT OF ENERGY WASHDC
RUCPDOC/DEPT OF COMMERCE WASHDC

UNCLAS SECTION 01 OF 03 BANGKOK 003219

SIPDIS

SIPDIS

STATE FOR EAP/MLS, EB, AND EB/ESC/IEC/ENR
STATE PLEASE PASS TO USTR
COMMERCE FOR JEAN KELLY
ENERGY FOR IN AND PI
JUSTICE FOR STUART CHEMTOB
TREASURY FOR OASIA

E.O. 12958: N/A
TAGS: ENRG EPET EINV KPRV TH
SUBJECT: GREATER COMPETITION IN THAILAND'S ELECTRIC POWER
SECTOR?

REF: A. 05 BANGKOK 7124
¶B. 06 BANGKOK 1861
¶C. 05 BANGKOK 6761

BANGKOK 00003219 001.2 OF 003

¶1. SUMMARY: The Royal Thai Government (RTG)'s unsuccessful attempt to privatize the state-owned electric power producer EGAT Plc has unexpectedly revived hopes for greater competition in the electric power sector. In view of EGAT's reversion to its former status as a state-owned enterprise, as a result of Supreme Administrative Court (SAC) decisions in November 2005 and March 2006, the energy bureaucrats drafting the nation's Power Development Plan (PDP) are considering allocating less capacity to EGAT and its subsidiaries and making the next round of bidding by independent power producers (IPPs) more competitive. The test will be the guidelines the RTG sets for the next round of IPP bidding, expected in early 2007. Advocates of greater competition have not yet carried the day. EGAT is still the overwhelmingly dominant player in the sector. A permanent regulator for the sector is not yet in place, and Thailand's broader regime of competition policy is underdeveloped, a contentious issue in our bilateral Free Trade Agreement (FTA) talks. End Summary.

¶2. EGAT'S REVERSION TO SOE STATUS: As set out in REFs A and B, the RTG's attempt to partially privatize the Electric Generating Authority of Thailand ended in complete failure. In November 2005, the SAC suspended the initial public offering (IPO) of shares pending its decision on whether the royal decrees transforming the state agency into a public company called EGAT Plc and transferring various assets to the the newly organized company were legal. In March 2006, the court ruled in favor of petitioners who claimed that the process by which EGAT Plc was formed was illegitimate. EGAT has since reverted to state-owned enterprise (SOE) status, and the RTG does not have plans to move forward with privatization anytime soon. The "caretaker" status of the government has put almost all policy initiatives on hold, and the policy of privatizing SOEs is particularly unpopular with the critics of Prime Minister Thaksin Shinawatra, largely because of its association with his government and the perception that Thaksin and/or his "cronies" would somehow make a profit from the privatization.

¶3. DRAFTING A NEW PDP: Notwithstanding the ongoing political crisis, the energy bureaucrats are drafting a new power development plan (PDP) so as to prepare for a new round of bidding by IPPs. According to the Economic Policy and Planning Office of the Ministry of Energy, the completed PDP is expected in July or August. The round of bidding was initially scheduled to take place last year, but it was delayed in part because of the controversy surrounding EGAT's now failed IPO. Going forward, the single most important decision in the new PDP concerns the allocation of capacity to the private sector, explains Dr. Bart Lucarelli, Chairman of the Energy Committee of the American Chamber of Commerce in Thailand. The more capacity that is allocated to the private sector, the more likely that international players will submit serious bids because they will see a future beyond the present round in Thailand's electricity market.

¶4. ALLOCATION OF NEW CAPACITY: According to the RTG's original plan in 2005, EGAT was guaranteed 50 percent of all new capacity between 2011-2015, as explained in REF C. Dr. Lucarelli and others were sharply critical of that decision at the time, particularly when it appeared that EGAT affiliates and subsidiaries EGCO and RATCH would be allowed to bid on the 50 percent of capacity to be allocated to IPPs.
Analysts covering the sector agree that, if EGCO and RATCH were not allowed to participate in the country's first round of IPP bidding since 1994, then it would allow more international players to move into the electricity market. Since both companies have low costs and large footprints in the country, they are seen to have a big advantage over outsiders. &If RATCH and ECGO are allowed to bid, some bidders will drop out,8 explained Mark Hutchinson, Head of Research at Mullis Captital, an investment bank specializing in energy deals. "Putting together a bid is an expensive process. But even so, there are some very competitive

international players that would like to be in this market."

¶5. STANDING UP TO EGAT: Since the collapse of EGAT,s privatization, there has been a perceptible shift in official thinking toward EGAT among energy bureaucrats. While there is no concrete indication that the new PDP will allocate anything less than the 50 percent of capacity previously envisioned, Embassy contacts confirm that the number has been a subject of discussion among the energy bureaucrats. The regulators have also moved in other ways to contain EGAT's influence on the sector. The Electricity Regulatory Board (ERB) has stood firm on not allowing companies (such as ECGO and RATCH) in which EGAT owns a stake greater than 25 percent from bidding on the capacity allocated to IPPs. The bureaucrats are also considering imposing similar restrictions on management control. Although the caretaker Minister of Energy appears unwilling to lead any push against EGAT, Dr. Vichit Lorjirachunkul, a key member of the ERB,s IPP Bid Solicitation Subcommittee, is pushing for an allocation arrangement where all electric power that EGAT purchases from offshore sources (in Cambodia and Laos, for example) counts against EGAT's 50 percent. The Ministry of Energy position is that offshore production count equally (by being subtracted from the total before allocation is made to either EGAT or the IPPs. Additionally, the IPP Bid Solicitation Subcommittee is considering other restrictions based on Stock Exchange of Thailand regulations that would place limits on state enterprise representation on boards of IPPs. SET regulations say that connected companies in which cross-holding exceeds 10 percent must be barred from bidding in a particular project, to avoid a conflict of interest.

¶6. RATIONALE: While many motives come into play behind the regulators, recent shift to a more independent posture vis--vis EGAT, the most important objective reason flows from the failure of the EGAT IPO. The logic behind allocating half of new capacity to EGAT assumed that the power producer was a company that would have access to

capital markets. Now that EGAT will be a wholly state-owned enterprise for the foreseeable future, it will be dependent upon the government for financing, and few observers believe that the RTG will have sufficient resources. There is also growing recognition that EGAT could use subsidiaries to bid on contracts reserved for IPPs in order to successfully scare away competitors whose presence could lead to lower prices for consumers. "If a company doesn't already have a project in Thailand that it can build off of, then they will probably stay away from the next round of IPP bidding, according to one industry source. "For the remaining players, the quality of the bids is likely to be lower because they are unlikely to put the proper money into a bid that they are unlikely to win."

¶7. EGAT'S CONTINUED DOMINANCE: EGAT's recent interest in purchasing Glow Energy, either directly or through a subsidiary, stands as evidence of its tendency to try to maintain a dominant position within the sector. Glow is a local IPP, in which Belgium-based Suez has a 67.3 percent stake. Control of the company came into question in March because of the merger of Suez with Gaz de France, which led to speculation that Suez would liquidate its holding in the local IPP. EGAT President Kraisri Karnasutra publicly expressed EGAT's desire to buy Glow, the only remaining IPP with which it does not already have a connection. The controversy died down when it became clear that Suez does not plan to put Glow up for sale, a point Glow management confirmed to econoff. Additionally, analysts have expressed concern that projections of future power demand by both EGAT and the RTG represent another means of bolstering EGAT's position. By underestimating future demand, for example, IPP bidding could be postponed. Then, in the event of a projected power shortage, EGAT would be in a position to win no-bid approval for its own power construction projects. While hardly certain, such scenario is on the minds of potential investors, who have conveyed these concerns to the RTG.

¶8. COMPETITION POLICY: Compounding the problem for would be investors in the power sector is Thailand,s undeveloped

regime of competition policy. Many experts such as Dr. Piyasavasti Amranand criticized RTG plans for the EGAT IPO in 2005 on the grounds that the government failed to establish an independent regulator beforehand. With respect to RTG competition policy generally, Dr. Duenden Nikomborirak, Research Director for Economic Governance, Sectoral Economics Program, at the Thailand Development Research Institute (TDRI), has also emphasized that, "Thailand has a law only on paper; its implementation has been obstructed by the lobbying of big business and political intervention." The result is that Thailand lags behind Singapore, Indonesia, and even Vietnam. State enterprises are effectively exempt from Thailand's 1999 Trade Competition Act. The lack of a definition under Article 25 for "dominant player" in particular renders the act a paper tiger in countering anti-competitive behavior other than outright monopoly, she concludes. This lack of a definition has led to the dismissal of complaints against pay television UBC and brewer Chang Beer. No one in the power industry is looking to the Trade Competition Act to check EGAT's anti-competitive behavior.

¶9. COMMENT: The Embassy concurs with Dr. Lucarelli, who told Econoff that recent moves to balance EGAT's power are welcome and should be encouraged. The health of the electric power sector is critical to Thailand,s continued economic growth, and liberalization of the sector would enhance the competitiveness of the Thai economy both by example for other sectors and through greater efficiency, especially if passed along to users in the form of lower electricity rates. In the absence of EGAT,s privatization any time soon, the next round of IPP bidding represents the most promising opportunity to introduce greater competition into the power

sector. In view of both the place of the sector in the economy and U.S. business interest in its development, when bilateral FTA talks resume, U.S. negotiators may expect that conditions in the power sector will be a highly visible measure of the RTG,s commitment to the principles set forth in the competition provisions of the agreement.
BOYCE